

1 Gerald Barrett (SB#: 005855)
2 WARD, KEENAN & BARRETT, P.C.
3 3838 N. Central Avenue, Suite 1720
4 Phoenix, AZ 85012
5 Tel: 602-279-1717
6 Fax: 602-279-8908
7 Email: gbarrett@wardkeenanbarrett.com

8 Israel G. Torres (SB# 020303)
9 TORRES CONSULTING & LAW GROUP
10 209 E. Baseline Road
11 Suite E-102
12 Tempe, AZ 85283-1299
13 Tel: 602-626-8805
14 Fax: 602-626-8889
15 Email: Israel@thetorresfirm.com
16 *Attorneys for Plaintiff*

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

18 WILLIAM BRADY CASHMAN; STEVE
19 LEE COX; ROBERT F. MACKNIS; KARL
20 DOUGLAS MEHRHOF; FRANK J.
21 NAMIO; EMIL F. NOBILE; TERRENCE
22 LAWTON SHEAHAN; and WAYNE D.
23 WILCOXON,

24

Case No.:

25

COMPLAINT

26

Plaintiffs,

27

v.

28

ARIZONA PUBLIC SERVICE
COMPANY,

Defendant.

29

Plaintiffs William Brady Cashman, Steve Lee Cox, Robert F. Macknis, Karl
30 Douglas. Mehrhof, Frank J. Namio, Emil F. Nobile, Terrence Lawton Sheahan and
31 Wayne D. Wilcoxon, and each of them, for their respective claims allege, as follows:
32

1 I. Introduction

2 1. This action arises under the Fair Labor Standards Act. Defendant has
3 unlawfully classified each plaintiff as an “exempt employee” contrary to the Fair Labor
4 Standards Act and regulations promulgated by the United States Department of Labor.
5 Each plaintiff on numerous occasions has worked more than 40 hours in a work week
6 during the last three years. Defendant has compensated plaintiffs for such work at their
7 regular rate. Accordingly, defendant has violated the Fair Labor Standards Act which
8 requires compensation for hours worked in excess of 40 hours in a work week to be paid
9 at one and one-half times an employee’s regular rate. As defendant willfully violated the
10 FLSA’s overtime provisions, plaintiffs are entitled to recover for unpaid overtime for
11 each violation that occurred within the last three years. As defendant acted in bad faith,
12 plaintiffs are entitled to recover an additional equal amount as liquidated damages.

13 II. The Parties, Jurisdiction and Venue

14 2. Plaintiffs, and each of them, are residents of Maricopa County, Arizona.
15 3. Joinder of the plaintiffs’ respective claims is permitted by Rule 20 (a) (1) of
the Federal Rules of Civil Procedure.

16 4. Defendant Arizona Public Service Company (APS) is incorporated under
17 the laws of Arizona.

18 5. This Court has subject matter jurisdiction pursuant to Section 16 of the Fair
19 Labor Standards Act. 29 U.S.C. § 216 (b). Likewise, this Court has subject matter
20 jurisdiction pursuant to 28 U.S.C. § 1337.

21 6. Venue is appropriate, under 28 U.S.C. § 1391, as the majority of the acts
22 and omissions which give rise to this case occurred in Arizona, including Maricopa
23 County, Arizona.

24 III. FLSA Covered Employment

25 7. Defendant APS is an “employer” within the meaning of Section 3 (d) of the
26 Fair Labor Standards Act. 29 U.S.C. § 203 (e).

27 8. Each plaintiff, during relevant times, is or was an “employee” of defendant
28 within the meaning of Section 3 of the Fair Labor Standards Act. 29 U.S.C. § 203 (e).

1 9. During relevant times, each plaintiff was employed by Defendant in a job
2 described by Defendant as Project Inspector – Electrical.

3 10. Each of the plaintiffs prior to becoming as Project Inspector – Electrical
4 worked as a journeyman lineman.

5 11. Each of the plaintiffs learned the trade by serving in and completing an
6 apprenticeship training program.

7 12. As a Project Inspector – Electrical, each of the plaintiffs serve as
8 Defendant's representative in the coordination, monitoring and inspection of projects
9 related to electrical line and substation construction, trenching and conduit installation
10 and site preparation activities completed on behalf of Defendant by third-party
11 contractors.

12 13. In performing the duties of Project Inspector – Electrical, each plaintiff
13 utilized knowledge and skill acquired through his apprentice training and prior work as a
14 journeyman lineman.

15 14. Defendant has classified each plaintiff as being "exempt" under the Fair
16 Labor Standards Act.

17 15. Defendant's classification of plaintiffs as "exempt" employees is contrary
18 to and in violation of the Fair Labor Standards Act.

19 16. Regulations promulgated by the United States Department of Labor,
20 including 29 C.F.R. 541.202(b), provide that inspection work of the type performed by
21 each plaintiff is not exempt from coverage under the Fair Labor Standards Act.

22 17. 29 C.F.R § 541.203 (g) expressly provides:

23 Ordinary inspection work generally does not meet the duties
24 requirements for the administrative exemption. Inspectors
25 normally perform specialized work along standardized lines
26 involving well-established techniques and procedures which
27 may have been catalogued and described in manuals or other
sources. Such inspectors rely on techniques and skills acquired
by special training or experience. They have some leeway in the
performance of their work but only within closely prescribed
limits.

1 18. None of the plaintiffs, during relevant times, had authority to formulate,
2 affect, interpret, or implement management policies or operating practices within the
3 meaning of 29 C.F.R. 541.202(b).

4 19. None of the plaintiffs, during relevant times, carried out major assignments
5 in conducting the operations of the business within the meaning of 29 C.F.R. 541.202(b).

6 20. None of the plaintiffs, during relevant times, performed work that affects
7 business operations to a substantial degree within the meaning of 29 C.F.R. 541.202(b).

8 21. None of the plaintiffs, during relevant times, has had authority to commit
9 the employer in matters that have significant financial impact within the meaning of 29
10 C.F.R. 541.202(b).

11 22. None of the plaintiffs, during relevant times, has had authority to waive or
12 deviate from established policies and procedures without prior approval within the
13 meaning of 29 C.F.R. 541.202(b).

14 23. None of the plaintiffs, during relevant times, has had authority to negotiate
15 and bind the company on significant matters within the meaning of 29 C.F.R.
16 541.202(b).

17 24. None of the plaintiffs, during relevant times, investigated and resolved
18 matters of significance on behalf of management within the meaning of 29 C.F.R.
19 541.202(b).

20 25. None of the plaintiffs, during relevant times, represented the company in
21 handling complaints, arbitrating disputes or resolving grievances within the meaning of
22 29 C.F.R. 541.202(b).

23 III. Defendant Requested, Suffered and Permitted the Working of Overtime
Hours.

24 26. Each plaintiff on numerous and repeated occasions has worked more than
25 40 hours in a work week during each of the last three years.

26 27. Each time a plaintiff worked more than 40 hours in a work week during
27 each of the last three years, defendant requested, suffered and permitted such work.

28. Defendant compensated plaintiffs for work in excess of 40 hours in a work week at their regular rate.

V. Defendant Has Violated the Fair Labor Standards Act.

29. By virtue of the foregoing, defendant has beached and continues to breach Section 7 of the Fair Labor Standards Act. 29 U.S.C. § 207.

30. Defendant's breach was willful within the meaning of 29 U.S.C. § 255. Therefore, a three year statute of limitations applies.

31. Under 29 U.S.C. § 216(b), an employer which violates the FLSA is liable for unpaid overtime and for "an additional equal amount as liquidated damages." This provision applies as defendant did not act in subjective good faith and lacked objectively reasonable grounds for believing that their conduct did not violate the FLSA.

32. Plaintiffs are entitled to recover their attorney's fees pursuant to 29 U.S.C. § 216(b).

WHEREFORE, plaintiffs seek entry of judgment in favor of each of them and against defendant in an amount equal to the unpaid overtime pay, liquidated damages and their attorney's fees. Plaintiffs further ask for all relief deemed by this Court to be just and proper under the circumstances.

Respectfully submitted this 21st day of January 2011.

WARD, KEENAN & BARRETT, P.C.

By: S/GERALD BARRETT
GERALD BARRETT
3838 N. Central Avenue, Ste.1720
Phoenix, AZ 85012

**TORRES CONSULTING & LAW
GROUP**

By: S/ISRAEL G. TORRES
Israel G. Torres
209 E. Baseline Road
Suite E-102
Tempe, AZ 85283-1299
Attorneys for Plaintiff